88-1463

No. _____

Supreme Court, U.S.
FILED
MAR 4 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT

OF THE UNITED STATES

October Term, 1989

THOMAS W. WRENN, *Petitioner,*

-vs.-

STATE INDUSTRIAL INSURANCE SYSTEM, an Agency of THE STATE OF NEVADA, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

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QUESTIONS PRESENTED

1. Is a totally disabled workman who is compelled to litigate his claim for worker's compensation benefits denied equal protection when his award does not include interest on delayed payments of his awarded benefits?

2. Is equal protection denied a totally disabled workman when he is required to pay his own attorney's fees under a statutory scheme which is intended to provide him with an attorney free of charge?

LIST OF PARTIES

The parties to the proceedings below were the petitioner, Thomas W. Wrenn and the Respondent, State Industrial Insurance System, an Agency of The State of Nevada.

The respondents this Court include State Industrial Insurance System, an Agency of the State of Nevada.

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IN THE SUPREME COURT

OF THE UNITED STATES

October Term, 1989

THOMAS W. WRENN, *Petitioner*,

-vs.-

STATE INDUSTRIAL INSURANCE SYSTEM, an Agency of THE STATE OF NEVADA, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

The petitioner Thomas W. Wrenn, through counsel, respectfully prays that a writ of certiorari issue to review the Judgment of the Supreme Court of the State of Nevada in the case of State Industrial Insurance System, an agency of the State of Nevada, Appellant v. Thomas Wrenn, Respondent, Case No. 18763, 104 Nev. ___ ,762 P.2d 884 (1988) entered

on the 24th day of October, 1988. (Order denying Rehearing was entered on December 6, 1988.)

OPINIONS BELOW

The District Court of the Eighth Judicial District Court for Clark County, Nevada, Department I reviewed the determination by an Appeals Officer under the Administrative Procedure Act of the State of Nevada and entered a Judgment in favor of Petitioner, Thomas W. Wrenn awarding him interest on delayed compensation payments from the time those payments became due until paid and further awarded Mr. Wrenn his actual attorney's fees. This Judgment was entered on December 15, 1987 and is part of the Appendix hereto (Appendix Pages 10-39.)

The evidentiary hearing on Mr. Wrenn's administrative claim was held before an Appeals Officer under the Administrative Procedure Act and the Appeals Officer's

Decision was entered on July 15, 1986 and is part of the Appendix hereto (Appendix Pages 15-29.)

As part of the Decision, the Appeals Officer included a prior Decision of the Eighth Judicial District Court of Clark County Nevada in Case No. A 218104 which was entered on June 1, 1983 and is part of the Appendix Hereto (Appendix Pages 30-33.) The Appeals Officer also included a prior Order Dismissing Appeal of the Nevada State Supreme Court in Case No. 14997 which was entered on March 11, 1983 and is part of the Appendix hereto (Appendix Pages 34-37.)

The Opinion of the Supreme Court of Nevada is reported at 104 Nev. ____, 762 P.2d 884 (1988) and further was assigned Case No. 18763 by the Supreme Court of the State of Nevada and is part of the Appendix hereto (Appendix Pages 1-9.)

A timely motion for rehearing to the Supreme Court of Nevada was denied on December 6, 1988, without opinion by Order Denying Rehearing, which is part of the Appendix hereto (Appendix Pages 40-41.)

JURISDICTION

The Supreme Court of the State of Nevada reversed the judgment of the District Court of Clark County, Nevada on October 24, 1988, and denied Motion for Rehearing on December 6, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3).

NEVADA STATUTES INVOLVED

NRS 616.2537 provides as follows:

> "1. The state industrial claimant's attorney shall, when appointed by an appeals officer, represent without charge a claimant before the appeals officer or the district court.
>
> 2. When representing a claimant, the state industrial claimants' attorneys shall:
>
> (a) Advise the claimant and present his case to the appeals

officer; and

> (b) Present in the district court an appeal from the decision of the appeals officer if, in the opinion of the state industrial claimants' attorney, the appeal is merited."

NRS 99.040 provides in pertinent part as follows:

> "1. When there is no express contract in writing fixing a different rate of interest, interest must be allowed. . . .:
>
> (c) Upon money received to the use and benefit of another and detained without his consent.
>
> (d) Upon wages or salary, if it is unpaid when due, after demand therefor has been made."

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment XIV states in pertinent part:

> ". . . nor shall any State. . .deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Shortly after July 3, 1978, Petitioner Wrenn commenced administrative

proceedings to obtain his correct workmen's compensation benefits. After prolonged administrative proceedings, the District Court entered a Decision on June 1, 1983 in Wrenn's favor (Appendix Pages 30-33) and the appeal of the State Industrial Insurance System (the administrative agency, hereinafter referred to as "SIIS") was dismissed by the Nevada Supreme Court on March 11, 1985 (Appendix Pages 34-37).

After the Order Dismissing Appeal was entered on March 11, 1985, Petitioner Wrenn then filed an administrative claim to enforce payment of benefits awarded in conformity with the District Court decision in his favor and for an award of accrued interest on the delayed benefits together with attorney's fees. In this regard, a Decision was entered by an Appeals Officer on July 15, 1986 (Appendix Pages 15-29) awarding Wrenn interest on delayed payments but denying his claim for

attorney's fees. The Decision was appealed by both Petitioner Wrenn and Respondent SIIS to the District Court, Clark County, Nevada and in the Judgment entered on December 15, 1987 (Appendix Pages 10-39), Wrenn was awarded both his attorney's fees and interest on delayed payment of benefits compensation and his attorney's fees.

SIIS appealed to the Nevada Supreme Court on January 13, 1988. During the appeal time and after Wrenn had filed his brief, the Nevada Supreme Court issued a decision in Weaver v. SIIS, 104 Nev. ___, 756 P.2d 1195 (1988) determining that a claimant was not entitled to receive interest on delayed compensation. Prior to the decision in Weaver, the Nevada Supreme Court had not acted upon either of the questions raised by Wrenn and there was no reason to believe that the Supreme Court would enter the decision that it did and therefore the constitutional

issue was not raised at the Appeals Officer level, the Trial Court, or in the proceedings before the Nevada Supreme Court.

Petitioner, Wrenn addressed the constitutional issue in his Petition for Rehearing for the reason that this was the first time that the constitutional issue could reasonably be addressed under the issues of the case. During the course of the oral argument, and in the decision of the Nevada Supreme Court it is apparent that they were concerned with the fundamental unfairness of their interpretation of the statute, however, they believed the deficiency should be corrected in the legislature.[1]

The Supreme Court did not address the specifics of the constitutional issue.

---

[1] Legislation is presently pending before the Nevada Legislature (A.B. 103 and A.B. 104) which may remedy Mr. Wrenn's grievances.

REASONS FOR GRANTING THE WRIT

I.

The Failure to Award Interest On Delayed Payments of Awarded Benefits Results In a Direct Reduction of Benefits to Any Injured Worker

Mr. Wrenn commenced an action to correct his benefits in 1978 and did not receive those corrected benefits until 1986. The effect of a delay of this magnitude has an obvious substantial impact on the benefits that Mr. Wrenn received.

In workmen's compensation matters, it has long been accepted that interest on delayed compensation payments is the only way to make the worker whole. Strachan Shipping Company v. Wedemeyer, 452 F.2d 1225 at p. 1229 (1971) stated as follows:

> "The rationale was well expressed by then Circuit Judge Burger, as follows:
>
> 'In the evolution of the law of remedies some things

> are bound to happen for the 'first time.' As a supplement to existing remedies long approved we cannot say that the allowance of interest is other than a factor which effectuates the polices of the Act for it is plainly in the direction of making the employee whole. Virginia Electric & Power Co. v. National Labor Relations Board, 319 U.S. 533, 540-541, 63 S.Ct. 1214, 87 L.Ed. 1568 (1943). We cannot regard changes in remedial mechanisms as beyond the Board's powers so long as they reasonably effectuate the congressional policies underlying the statutory scheme. National Labor Relations Board v. Seven-Up Bottling Co., supra [344 U.S. 344 (1954)]."
>
> International Brotherhood of Operative Potters v. N. L. R. B., 1963, 116 U.S. App. D.C., 34,320 F.2d 757, 761."

Twenty-seven states have legislation allowing interest on delayed compensation, Land & Marine Rental Co. v. Rawls, 686 P.2d 1187 at p. 1192 (Alaska, 1984) and eight states have held interest applicable to compensation awards. Land & Marine Rental Co. v. Rawls, 686 P.2d 1187 (Alaska 1984);

Parker v. Brinson Construction Co., 78 So.2d 873 (Fla. 1955); Chicago & Interurban Traction Co. v. Industrial Board of Illinois, 118 N.E. 464 (Ill., 1917); Goodnite v. Farm Equipment Co., 106 So. 2d 383 (Miss., 1958); Hanson v. North Dakota Workmen's Compensation Bureau, 248 N.W. 680 (No. Dak., 1933); Campbell v. Walsh-Kaiser Co., 81 A.2d 684 (R.I., 1951); Norman v. American Woolen Co., 84 A.2d 125 (Vt., 1951); and Tisdel v. Industrial Com'n of Arizona, 751 P.2d 527 (Ariz., 1988).

II.

Equal Protection Requires Payment of Interest on Delayed Benefits for Totally Disabled Workers

Califano v. Goldfarb, 430 U.S. 199, 97 S.Ct. 1021 (1977) which concerned gender-based distinction between widows and widowers with regard to Social Security benefits indicated that social security

payments are entitled to equal protection.

Califano v. Goldfarb, 430 U.S. 199 at 212, 97 S.Ct. at 1029, stated in part as follows:

> Therefore, *Wiesenfeld*, supra at 646-649, 95 S.Ct. at 232, expressly rejected the argument of appellant's predecessor, relying on *Flemming v. Nestor*, that the 'non-contractual' interest of a covered employee in future social security benefits precluded any claim of denial of equal protection. Rather, *Wiesenfeld* held that the fact that the interest is 'noncontractual' does not mean that 'a covered employee has no right whatever to be treated equally with other employees as regards the benefits which flow from his other employment,' nor does it 'sanction differential protection for covered employees which is solely gender based.' 420 U.S., at 646, 95 S.Ct. at 1232. On the contrary, benefits directly related to years worked and amount earned by a covered employee, and not to the need of the beneficiaries directly,' like the employment-related benefits in *Frontiero*, 'must be distributed according to classifications which do not without sufficient justification differentiate among covered employees solely on the basis of sex.' 420 U.S., at 647, 95 S.Ct. at 1233."

Equal protection precludes discrimination against that class of injured

workers, the totally and permanently disabled, who are compelled to litigate their benefit claims and who thereby, because of substantial delays (11 years in the instant case) are denied the interest on those delayed benefits payments. Those claimants denied disability benefits and who are thereby forced to litigate in order to recover those benefits are, the class who needs the protection of the Fourteenth Amendment.

III.

Equal Protection is Denied an Indigent Workman When he is Refused the Free Services of a Statutorily Mandated State Appointed and Paid Attorney

NRS 616.2537 provides for the appointment of the State Industrial Claimant's Attorney for an Injured Workman without charge. The Appeals Officer who heard this matter determined that Mr. Wrenn was entitled to be represented by the State

Industrial Claimant's Attorney. (Appendix Page No. 24, Finding 21)

The District Court who reviewed the Appeals Officer's Decision saw the obvious inequities in depriving a totally disabled workman of representation and awarded Mr. Wrenn his actual attorney's fees.

Under NRS 616.2537, Mr. Wrenn was entitled to representation free of charge. Under the Nevada Supreme Court's interpretation, he is required to pay for his own representation. Out of necessity, the only way he can pay for his representation is out of the benefits he will receive if successful. This results in a substantial reduction of the actual benefits that the statutes intended Mr. Wrenn to have. The statutes as construed by the Nevada Supreme Court thereby invidiously discriminate against the handicapped and indigent workmen who are compelled to litigate to receive their benefits and unlike that

class of workmen who are afforded the free services of the State Industrial Claimant's Attorney must compensate their counsel out of their award.

Califano v. Goldfarb, supra, which has been cited above, precludes this denial of equal protection.

CONCLUSION

The eleven year delay in payment of benefits and the failure to award attorney's fees resulted in Mr. Wrenn's actual workmen's compensation benefits being reduced to approximately twenty percent of what they should have been. The statutory construction of Nevada's industrial insurance benefits by the Nevada Supreme Court patently violates equal protection as it invidiously discriminates against a totally disabled and indigent workman and encourages delayed payments, prolonged litigation, denial of adequate

representation and substantially reduces the actual benefits that the workmen receives.

For these various reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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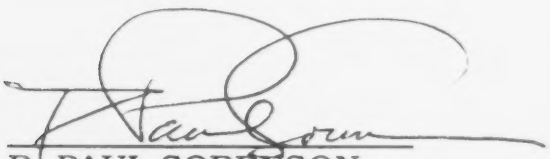

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APPENDIX

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Opinion

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Findings of Fact, Conclusions of Law and Judgment

Case Nos. A 250176 and A250187 filed December 15, 1987 in the District Court, Clark County Nevada 10-39

Exhibit "1"

Findings of Fact, Conclusions of Law and Decision, Claim No. 61-23385, Appeal No. LV6131 filed July 15, 1986 before the Appeals Officer 15-29

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IN THE SUPREME COURT OF THE STATE OF NEVADA

Filed October 24, 1988

No. 18763

STATE INDUSTRIAL INSURANCE SYSTEM, an Agency of the State of Nevada,

Appellant,

vs.

THOMAS W. WRENN,

Respondent.

Appeal from order awarding interest and attorney's fees. Eighth Judicial District, Clark County; J. Charles Thompson, Judge.

Reversed.

Pamela Bugge, General Counsel, Carson City; Douglas T. Quon, Associate General Counsel, Las Vegas, for Appellant.

R. Paul Sorenson,
Las Vegas,
for Respondent.

OPINION

PER CURIAM:

Respondent Thomas Wrenn suffered an industrial injury to his left eye in 1961, and an additional injury to the eye in 1978, resulting in total disability of the eye. Appellant SIIS (then NIC), classified this injury as an outgrowth of the initial injury and allowed Wrenn Compensation for complete loss of the eye based on the rate in effect in 1961, rather that in 1978. Wrenn appealed that determination, and the State Industrial Claimants' Attorney was appointed to represent him. See NRS 616.2535 and 616.2537. After the appeals officer affirmed SIIS's decision, the State Industrial Claimants' Attorney declined any further representation of Wrenn because, in his opinion, no appeal to

the district court was merited. See NRS 616.2537(2)(b). Wrenn then retained private counsel and pursued a successful petition for judicial review in the district court. This court subsequently affirmed the district court's decision that the 1978 injury to Wrenn's eye was separate and unrelated to the 1961 injury and should be compensated at the rate in effect in 1978. See SIIS v. Wrenn, Order Dismissing Appeal, Supreme Court Docket No. 14997 (filed March 11, 1985).

Following this court's decision, Wrenn filed a claim for, among other things, attorney's fees incurred in pursuing the appeals and interest on the delayed payment of benefits. Wrenn's claim was denied in full. On appeal, the appeals officer determined that Wrenn was entitled to interest on the award of benefits, but denied him attorney's fees. Both Wrenn and the SIIS petitioned the district court for review of this decision. The district

court consolidated the actions, and, concluding that Wrenn was entitled to both interest and attorney's fees, affirmed the award of interest and reversed the denial of attorney's fees. SIIS now appeals the district court's order. For the reasons expressed below, we conclude that Wrenn is not entitled to recover either interest or attorney's fees.

SIIS first contends that the district court erroneously awarded Wrenn interest on the delayed payment of his worker's compensation benefits. Specifically, SIIS argues that the Nevada Industrial Insurance Act (NRS Ch. 616) includes no provision for such an award. This court recently decided the identical issue in Weaver v. SIIS, 104 Nev. __, 756 P.2d 1195 (1988). Although Wrenn implicitly concedes that Weaver bars the recovery of interest on the delayed payment of compensation benefits, he urges this court to follow Imperial Palace v. Dawson, 102 Nev. 88, 715 P.2d 1318 (1986),

and award him interest as a sanction against the SIIS for the delay in payment. Because the record on appeal does not reveal that the delay in payment of worker's compensation benefits was due to any arbitrary conduct or bad faith practice of the SIIS, we conclude that sanctions are not warranted. We also reject Wrenn's alternative argument that if interest is not awarded, the SIIS should compensate him for his injury at the rate in effect at the time of payment to eliminate the inequities resulting from delayed payment. NRS 616.625 states that the amount of compensation must be determined as of the date of injury, unless otherwise provided by specific statute. No statute provides for compensation at the rate Wrenn suggests. Therefore, NRS 616.625 establishes compensation as of the date of injury, i.e., 1978.

SIIS next contends that the district court erroneously granted Wrenn attorney's

fees because the Nevada Industrial Insurance Act contains no express provision for the allowance of attorney's fees, with two exceptions inapplicable to this case. See NRS 616.544 and 616.647. SIIS also argues that, pursuant to State Indus. Ins. System v. Snapp, 100 Nev. 290, 680 P.2d 590 (1984), attorney's fees are not recoverable under NRS 18.010 in worker's compensation cases. Wrenn, on the other hand, argues that he did not voluntarily retain private counsel to represent him, but was deprived of representation under NRS 616.2535 and 616.2537, and that Snapp therefore is inapplicable. Wrenn contends that when the State Industrial Claimants' Attorney is appointed to represent a claimant, and then declines to represent the claimant on appeal from an adverse agency decision, the claimant is entitled to attorney's fees if he successfully appeals with the assistance of privately retained counsel. Because the State Industrial

Claimants' Attorney erroneously determined that no appeal of the agency decision to compensate Wrenn at the 1961 rate was merited, Wrenn argues that he is entitled to legal representation without charge under the Nevada Industrial Insurance Act.

NRS 616.2535 and NRS 616.2537 do not mandate the appointment of the State Industrial Claimants' Attorney to represent all claimants free of charge in proceedings before either the appeals officer or the district court. Under NRS 626.2535, the appeals officer must appoint the State Industrial Claimants' Attorney to represent a claimant when the "appeals officer finds that the claimant would be better served by legal representation in his case." Further, once appointed, the State Industrial Claimants' Attorney is obligated to represent the claimant at the district court level only "if, in the opinion of the state industrial claimants' attorney, the appeal is

merited." See NRS 616.2537(2)(b). Further, the legislature has not expressly included in the legislative scheme. See, e.g., Weaver, 104 Nev. at ___, 756 P.2d at 1195; Goldstine v. Jensen Pre-Cast, 102 Nev. 630, 729 P.2d 1355 (1986). As in Snapp, we decline to allow a claimant recovery of attorney's fees in a worker's compensation claim absent express statutory authorization.

In light of our disposition of this appeal, we need not consider appellant's

remaining contention. We reverse the order of the district court.[1]

/s/ Young , A.C.J.
Young

/s/ Steffen, , J.
Steffen

/s/ Springer , J.
Springer

/s/ Mowbray , J
Mowbray

DISTRICT COURT

[1]The Honorable E.M. Gunderson, Chief Justice, did not participate in the decision of this appeal.

DISTRICT COURT

CLARK COUNTY, NEVADA

Filed December 15, 1987

Case Nos. A 250176 and A 250187

(consolidated)

THOMAS W. WRENN, Petitioner, vs. STATE INDUSTRIAL INSURANCE SYSTEM, an Agency of the State of Nevada, Respondent.	)

STATE INDUSTRIAL INSURANCE SYSTEM, an Agency of the State of Nevada, Petitioner, vs. THOMAS W. WRENN, Respondent.	)

FINDINGS OF FACT, CONCLUSIONS OF LAW

AND JUDGMENT

Date of Hearing: 12-14-87

Time of Hearing: 9:00 A.M.

This matter having come on for hearing on the 14th day of December, 1987, upon the Petition for Judicial Review filed by THOMAS W. WRENN in Case No. A 250176 and the Petition for Judicial Review filed by the STATE INDUSTRIAL INSURANCE SYSTEM in Case No. A 250187, which cases were consolidated by an Order entered by this Court on December 2, 1986, and the Court having considered the pleadings and papers filed by the respective parties and other good cause appearing therefor, the Court finds as follows:

FINDINGS OF FACT

1. The Findings of Fact entered by the Appeals Officer on July 15, 1986 are not disputed and are therefore adopted by this Court in total. A copy of said Findings of Fact are attached hereto as Exhibit "1".

CONCLUSIONS OF LAW

That based upon the foregoing Findings of Fact, the Court concludes as follows:

1. That THOMAS W. WRENN is entitled to interest pursuant to NRS 99.040(3) and (4) on all delayed payments of compensation from the time they became due until paid at the lawful rate of interest in effect.

2. That THOMAS W. WRENN is entitled to recover his attorney's fees for the reason that he was entitled to have the State Industrial Claimant's Attorney represent him without charge under NRS 616.253. That he was deprived of such representation through no fault of his own and a claimant should be entitled to attorney's fees when he undertakes an action which has been turned down by the State Industrial Claimant's Attorney and is successful with the assistance of privately retained counsel.

JUDGMENT

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED as follows:

1. That the Decision of the Appeals Officer entered on July 15, 1986 awarding Claimant, THOMAS W. WRENN, interest on compensation from the date it became due until paid at the lawful rate, is affirmed.

2. That the Decision of the Appeals Officer entered on July 15, 1986 denying Claimant, THOMAS W. WRENN's request for attorney's fees is hereby reversed and the Court hereby enters judgment in favor of THOMAS W. WRENN and against the STATE INDUSTRIAL INSURANCE SYSTEM for Mr. Wrenn's actual attorney's fees he incurred after being refused representation by the State Industrial Claimant's Attorney.

3. That execution of this Court's judgment is hereby stayed pending appeal of this matter by the State Industrial Insurance

System to the Supreme Court of the State of Nevada or until further Order of this Court.

DATED this 15 day of December, 1987.

/s/ J. Charles Thompson
DISTRICT JUDGE

BY: /s/ R. Paul Sorenson
R. PAUL SORENSON
Attorney for THOMAS W. WRENN
323 Las Vegas Blvd. South
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EXHIBIT "1"

BEFORE THE APPEALS OFFICER

Filed July 15, 1986

Claim Number 61-23385

Appeal Number LV6131

In the Matter of the Contested Industrial Insurance Claim	)
of	)
THOMAS W. WRENN,	)
Claimant.	)

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Introduction

This matter having come on for hearing pursuant to notice of hearing scheduling this matter for September 4, 1985, and the matter having been continued to October 28, 1985, and at that time the claimant, Thomas W. Wrenn having personally appeared with his attorney, R. Paul Sorenson, and the State Industrial Insurance System being represented by Michael P. Golden, Associate General Counsel, and the Court having heard testimony, considered evidence submitted in support of the respective claims and good cause appearing, the Appeals Officer herein enters his Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT

1. Claimant, THOMAS W. WRENN sustained a compensable injury on June 24, 1961.

2. That on or about July 3, 1978, Claimant dislocated the intraocular lens which had been implanted as part of the medical treatment of the occupational injury received on June 24, 1961.

3. That the injury sustained on July 3, 1978 was accepted by the State Industrial Insurance System as an outgrowth of the original injury in 1961.

4. That on June 1, 1983, the Honorable Michael J. Wendell, District Judge of the Eighth Judicial District Court entered a Decision and Order that Thomas W. Wrenn was entitled to be compensated for his eye injury when it ". . .occurred in 1978 and petitioner is entitled to benefits based upon the then existing rates." A copy of that Decision and

Order is attached hereto as Exhibit "A" and by reference made a part hereof.

5. That the State Industrial Insurance System appealed that Decision and Order to the Supreme Court of the State of Nevada.

6. That the Supreme Court of the State of Nevada dismissed the appeal of the State Industrial Insurance System on March 11, 1985. In that Order they concluded that " . . . the District Court properly ordered payment of benefits at the 1978 rates." A copy of that Order Dismissing Appeal is attached hereto as Exhibit "B" and by reference made a part hereof.

7. That THOMAS W. WRENN then requested the State Industrial Insurance System to compensate him in accordance with the Decision of Judge Wendell.

8. That THOMAS W. WRENN then filed a claim with the State Industrial Insurance System claiming that he was entitled to

compensation from July 3, 1978 to the present; that he was entitled to interest from the time the monies became due until actually received and in addition he was entitled to attorney's fees and further to the right to elect to receive his permanent partial disability award in a lump sum.

9. That the State Industrial Insurance System did not contest his right to receive compensation during this period of time, however, disputed the wage base he utilized in computing the amount due and they further disputed his right to interest, attorney's fees and the lump sum payment of his permanent disability award.

10. That at all times from July 3, 1978 through March 10, 1982 Claimant, THOMAS W. WRENN was totally disabled from a work related injury and entitled to receive compensation for Temporary Total Disability.

11. That at all times from March 10, 1982 to June 30, 1986, Claimant, THOMAS W. WRENN is entitled to receive compensation as part of the rehabilitative maintenance program ordered on February 20, 1985 (Appeal No. 4765), and affirmed by the Honorable Joseph Pavlikowski, District Judge, Eighth Judicial District Court on November 12, 1985 in Case No. A 237562.

12. That the Court specifically finds on the issue of "wage base" as follows:

A. That at the time Claimant, THOMAS W. WRENN was injured in 1961, his earnings were in excess of the maximum wage and therefore, he was entitled to maximum benefits at that time.

B. That THOMAS W. WRENN had returned to employment prior to July 3, 1978 and from January 1, 1977 to July 3, 1978, his actual monthly

wages were $1,495.86, while working. That the maximum monthly wage for purpose of computing workmen's compensation benefits was $1,377.08.

C. That during the year and a half immediately preceding July 3, 1978, the Claimant, THOMAS W. WRENN was off of work for part of the time due to problems with his eyes, which was related to the prior work injury. That the State Industrial Insurance System calculated the claimant's compensation benefits utilizing a method which averaged the claimant's disability time when he earned nothing and received no compensation from the State Industrial Insurance System, with his time worked, thereby reducing his average earnings beneath the maximum and the State Industrial Insurance System further claimed that the Order

of the Supreme Court of the State of Nevada and the Decision of Judge Wendell should be interpreted to reflect that the maximum average monthly wage to be utilized in calculating benefits should be that which was effective from July 1, 1977 to June 30, 1978.

13. That the claimant herein was entitled to receive his compensation benefits on a biweekly basis from July 3, 1978 to the present date.

14. That Claimant, THOMAS W. WRENN is entitled to interest at the legal rate on all deficiencies in payment of compensation from July 3, 1978 until paid.

15. That on March 10, 1982, the Claimant was determined to be permanently partially disabled to the extent of twenty-four (24%) percent of the whole body.

16. That the State Industrial Insurance System paid Mr. Wrenn utilizing, first, the maximum wage base in effect in 1961, then, the new wage base as they calculated it for 1978, and in addition thereto, determined that he was not permitted to elect to receive this permanent partial disability in a lump sum.

17. That Claimant, THOMAS W. WRENN refused all payments tendered to him concerning permanent partial disability insisting on his right to make that election to receive the same in a lump sum.

18. That Claimant, THOMAS W. WRENN had appointed for him the State Industrial Attorney to prosecute his claims in the issues referred to and ultimately determined in his favor by Judge Wendell and the Supreme Court of the State of Nevada.

19. That on May 31, 1978, the State Industrial Attorney refused to continue representing Claimant, THOMAS W. WRENN,

forcing him to obtain private counsel to pursue the continuation of those claims.

20. That Mr. Wrenn did obtain private counsel to prosecute his claims further and entered into a fee agreement which provided to his attorney a sum of money equal to one-third of his recovery in excess of the $3,000.00 settlement offer made to him by the System prior to entering into that agreement.

21. That THOMAS W. WRENN had a bona fide claim to pursue against the State Industrial Insurance System and its predecessor, the Nevada Industrial Commission and was entitled to have the State Industrial Attorney represent him without charge.

CONCLUSIONS OF LAW

That based upon the foregoing Findings of Fact, the Appeals Officer concludes as follows:

1. That Claimant, THOMAS W. WRENN is entitled to have his compensation benefits paid to him utilizing the maximum wage base in effect as of the date of the subsequent injury, July 3, 1978, which is the sum of $1,377.08. NRS 616.027(1).

2. That Claimant, THOMAS W. WRENN is entitled to interest on compensation benefits from the date they became due until paid at the legal rate of interest of twelve (12%) percent per annum. NRS 99.040.

3. That Claimant, THOMAS W. WRENN is entitled to elect to receive his award of permanent partial disability, which determination was made on March 10, 1982, in a lump sum (NRS 616.607) plus interest of twelve (12%) percent per annum from the date the payment became due until paid.

4. That although THOMAS W. WRENN was entitled to legal representation in prosecuting his claim without charge, and that

although THOMAS W. WRENN incurred legal fees to the extent of one-third of his recovery in exceeds of $3,000.00, that there is no authority under Nevada law to permit the award of attorney's fees to Claimant.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered:

1. That Claimant is entitled to have all of his back total temporary disability and rehabilitation compensation re-calculated commencing on July 3, 1978 and continuing to June 30, 1986, utilizing the maximum wage base in effect on July 3, 1978, which is the sum of $1,377.08 per month.

2. That Claimant is entitled to interest on all back temporary total disability and rehabilitation compensation from July 3, 1978 to June 30, 1986 calculated at the rate of twelve (12%) percent per annum from the

date the payments became due until the same are paid.

3. That Claimant is entitled to elect to receive his award of permanent partial disability in the amount of twenty-four (24%) percent in a lump sum, which is payable as of the date of its determination on March 10, 1982, and further is entitled to interest thereon at the rate of twelve (12%) percent per annum from the date the same became due until paid.

4. That the State Industrial Insurance System is further directed to prepare calculations showing the amount that is due to the Claimant under this Decision along with the date it became due and further showing all payments made to the Claimant and the date they were paid as to temporary total disability and rehabilitation maintenance compensation, as well as calculation of amount due for Permanent Partial Disability, including the

calculation of interest at twelve (12%) percent per annum, and submit the same within five days of the date of this Decision to the Appeals Officer and to counsel for the claimant, R. Paul Sorenson, for his approval or objection, which approval or objection shall be presented to the Appeals Officer and the General Counsel of the State Industrial Insurance System within three days of the receipt of said calculation.

5. That Claimant's request for attorney's fees is hereby denied.

NOTICE

Pursuant to NRS 233.130, should any party desire to appeal this final determination of the Appeals Officer, a Petition for Judicial Review must be filed with the District Court within thirty (30) days after service by mail of

this decision.

DATED this 15 day of June, 1986.

APPEALS OFFICER

/s/ Jay W. Brewer
JAY W. BREWER, ESQ.

BY: /s/ R. Paul Sorenson
R. PAUL SORENSON
Attorney for Claimant
323 Las Vegas Blvd. South
Las Vegas, Nevada 89101

EXHIBIT "A"

IN THE EIGHTH JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

Filed June 1, 1983

Case No. A-218104

THOMAS W. WRENN,

Petitioner,

vs.

STATE INDUSTRIAL INSURANCE SYSTEM, an agency of the State of Nevada,

Respondent.

DECISION AND ORDER

This is a judicial review of an appeals officer's ruling relating to two claims filed by the Petitioner. The first claim relates to the loss of the left eye. The second claim relates to the development of psoriasis. The ruling of each claim was adverse to the Petitioner.

The facts are not disputed. As to the first claim, the Petitioner suffered an injury to the left eye while on the job in 1961. The industrial claim was accepted and Petitioner received a 27-1/2% disability of the eye and was given a lump sum award of $1,100.

In February of 1975, the Petitioner developed a cataract in the left eye and sought to reopen the claim with the NIC. The claim was accepted. Surgery was performed May 5, 1975, as a recognized industrial claim. Without detailing all the medical problems, ultimately the Petitioner suffered a complete loss of the eye in 1978. This resulted from the surgically implanted lens becoming dislocated. The loss of the eye occurred from the surgical removal of the lens.

In 1982 the NIC awarded him compensation for the complete loss of the eye in the amount of $4,000 less the $1,100 originally awarded. The award was based on

the compensation rate fixed in 1961 when the initial injury occurred. The 1978 rates are considerably higher than the 1961 rates.

As to the second claim, the Petitioner was denied any relief by the Commission for the skin disorder which he claims resulted from stress due to the eye problem.

The Hearing Officer construed NRS 616.625 to fix the compensation for the loss of the eye under the rate that applied in 1961 when the left eye was injured.

We disagree. The loss of the eye in 1978 resulted from a separate, unrelated accident. The compensable injury occurred in 1978 and Petitioner is entitled to benefits based upon the then existing rates. The decision of the Hearing Officer is reversed.

On the second issue, namely the psoriasis, a review of the record indicates that there is a basis in fact to support the Appeals Officer's determination upholding the denial of

the claim. This Court cannot substitute its judgment for the Appeal Officer's judgment. The Court affirms that determination.

IT IS SO ORDERED.

Dated this 1st day of June, 1983.

/s/ Michael J. Wendell
DISTRICT JUDGE

EXHIBIT "B"

IN THE SUPREME COURT OF THE STATE OF NEVADA

Filed March 11, 1985

No. 14997

STATE INDUSTRIAL INSURANCE SYSTEM,	)
Appellant,	)
vs.	)
THOMAS W. WRENN,	)
Respondent.	)

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court reversing a decision of the appeals officer of the Department of Administration. Respondent suffered an industrial injury to his eye in 1961, for which he received worker's compensation benefits. In 1978, respondent had further problems with his eye. and the SIIS awarded him additional compensation at the statutory rates

in effect in 1961. Respondent pursued an administrative appeal, but the appeals officer affirmed the award. Thereafter, respondent petitioned the district court for judicial review. The district court reversed the decision of the appeals officer and held that the compensation awarded should have been calculated at the statutory rates in effect in 1978.

Appellant first contends that the district court erred by interpreting NRS 616.625 as providing for compensation at 1978 statutory rates, in effect at the time of respondent's latest claim, rather than at the 1961 rates in effect at the time respondent suffered the original industrial accident.[1] We disagree. Having reviewed the briefs and the record on appeal, and having heard the oral arguments of

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1 [1] NRS 616.625 provides in pertinent part:

> **1**[T]he amount of compensation and benefits and the person or persons entitled thereto must be determined as of the date of the accident or injury to the employee, and their rights thereto become fixed as of that date.

counsel, we conclude that the district court properly ordered payment of benefits at the 1978 rates. We note that it has been a long-standing policy of this court to construe worker's compensation laws liberally in favor of the protection of the injured workers. See Hansen v. Harrah's, 100 Nev. 60, 675 P.2d 394 (1984).

Appellant also contends that the district court exceeded its permissible scope of review under the NRS 233B.140 by reversing the decision of the appeals officer. We have determined, however, that the district court reversed because of the appeals officer's error or law, and therefore, this contention is without merit. See NRS 233B.140(5).

There being no error on the part of the district court, we hereby

ORDER this appeal dismissed.[2]

/s/ Springer , C.J.
Springer

/s/ Mowbray , J.
Mowbray

/s/ Gunderson , J.
Gunderson

/s/ Steffen , J.
Steffen

/s/ Zenoff , Sr.J.[3]
Zenoff

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[2] Further, we hereby vacate our stay order of October 19, 1985.

[3] The Governor designated David Zenoff, Senior Justice to participate in this case pursuant to Nev. Const. art. 6 Sec. 4.

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration Hearings Division, does hereby certify that on the date shown below a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION, was duly mailed, postage fully prepaid, addressed to the following; and, further, that there is regular service by mail between the place of mailing and the places so addressed.

DATED this 16th day of July, 1986.

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/s/ Maria A. Cable

IN THE SUPREME COURT OF THE STATE OF NEVADA

Filed December 6, 1988

No. 18763

STATE INDUSTRIAL INSURANCE SYSTEM, an Agency of the State of Nevada,	)
Appellant,	)
vs.	)
THOMAS W. WRENN,	)
Respondent.	)

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c)

It is so ORDERED.[1]

/s/ Young , A.C.J.
Young

/s/ Steffen, , J.
Steffen

/s/ Springer , J.
Springer

/s/ Mowbray , J
Mowbray

[1] The Honorable E. M. Gunderson, Chief Justice, did not participate in the decision of this appeal.